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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,632	11/10/2003	Brian J. Thompson	1373-PA01	4804
27189	7590	10/24/2005	EXAMINER	
PROCOPIO, CORY, HARGREAVES & SAVITCH LLP 530 B STREET SUITE 2100 SAN DIEGO, CA 92101			AYRES, TIMOTHY MICHAEL	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 10/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/705,632	THOMPSON, BRIAN J.
	Examiner Timothy M. Ayres	Art Unit 3637

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 September 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) 3,4,6,8,12,17,18, and 20 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,5,7,9-11,13-16 and 19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 November 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/27/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

This is a first office action on the merits of application SN 10/705,632.

### ***Election/Restriction***

1. Claims 3, 4, 6, 8, 12, 17, 18, and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, currently claim 1 is generic. Election was made **without** traverse in the reply filed on July 6<sup>th</sup>, 2005. Please note that the examiner has added 3, 12, and 18 as being drawn to the non-elected species.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the spring connected to the flag rod must be shown or the feature(s) canceled from claim 14. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

3. Claim 1 is objected to because of the following informalities:  
Line 7 of claim 1 says "horizontal axis" and should be "horizontal plane" or "vertical axis"  
Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
5. Claim 14 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It

is unclear how a spring is connected to the flag rods in order for it to return the flag rods to a designated position.

***Claim Rejections - 35 USC § 102***

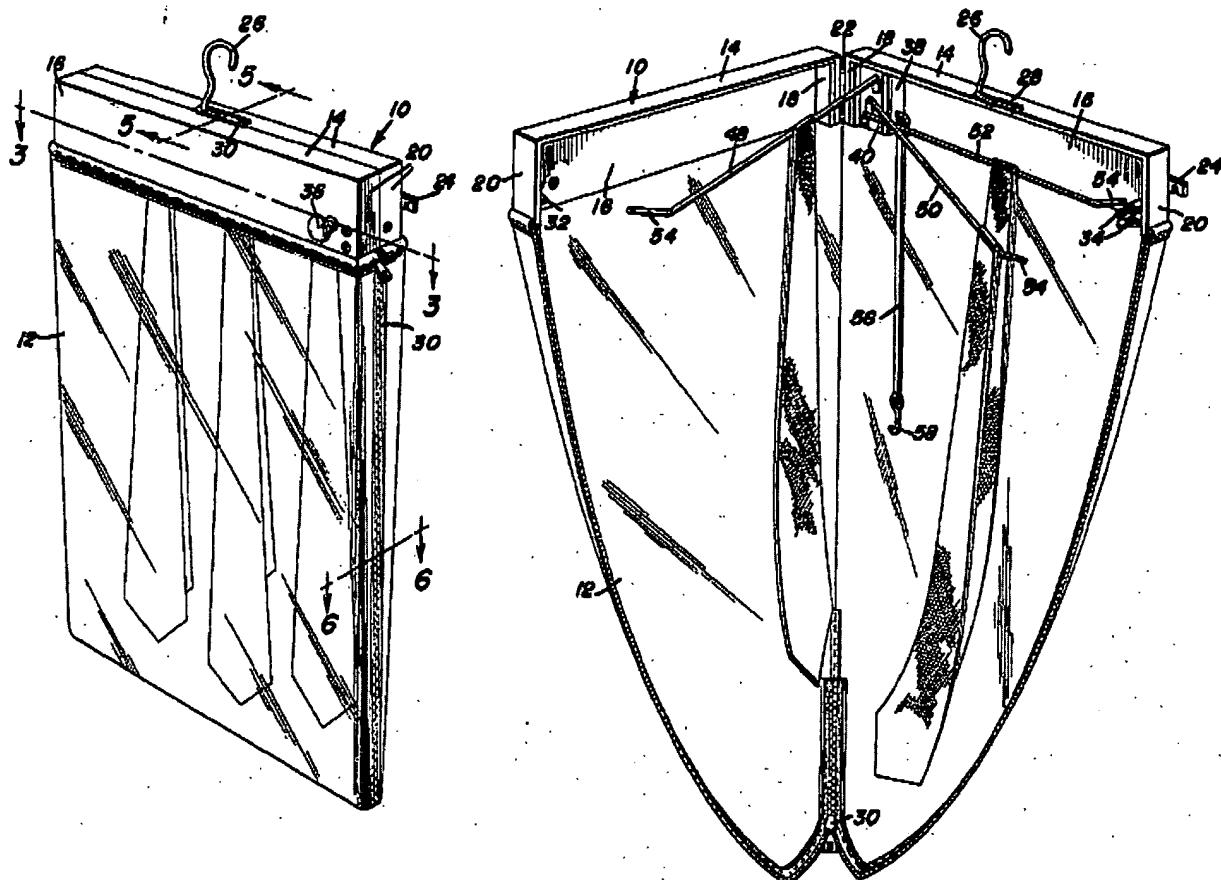
6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 2,659,643 to Friesz. Friesz '643 discloses a housing (10,12) with a rigid upper portion (10) and flexible lower portion (12). A means to open and close the housing includes a hinge (22) and a slide member (30). A joint mechanism (40) attached to the inner vertical wall of the upper portion of the housing (10) with tubular connections (42,44,46) allows a series of horizontal flag rod (48,50,52) rotate on a substantially horizontal plane. A means for containing flags from sliding is a slight upward bend (54) at the second end of the flag rod (48,50,52). A means for hanging the housing includes a hanger (26) that comes from the top (14) of the upper portion (10) of the housing. The housing (10,12) pivots and opens around the hinge (22) to expose the flag rods (48,50,52) so that the flag rods (48,50,52) can be rotated out and ties or flags can be placed on them. The structure is disclosed to hold ties, but is capable to hold flags. The use of flags is an intended use and it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does

not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The housing (10,12) is substantially rectangular with height longer than the width and then depth.



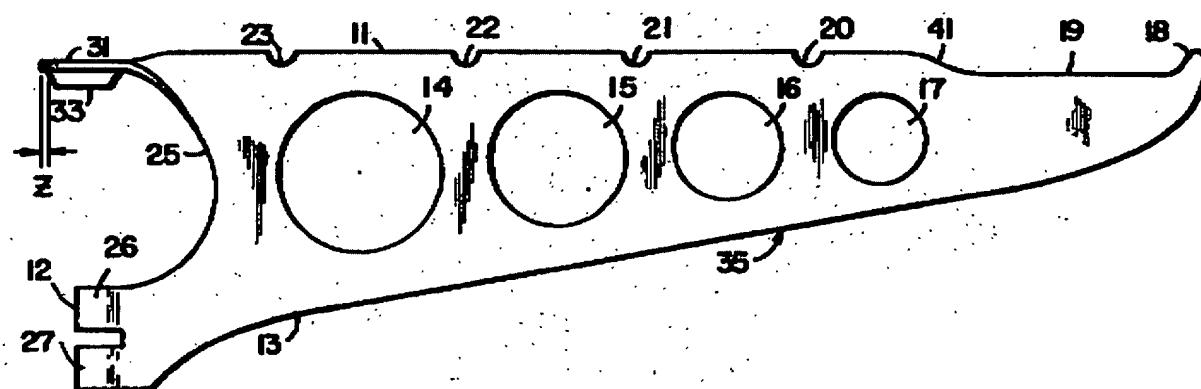
invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,659,643 to Friesz in view of U.S. Patent 5,356,000 to Scicluna. Friesz '643 discloses every element as claimed and discussed above except the means to open and close the housing being two doors. Scicluna '000 discloses a housing (12) with the means to open and close the housing (12) to be two doors (14a, 14b) that rotate at opposite sides of the housing (12). Around the outside of the two doors (14a, 14b) are zippers (32) to close the housing. At the time of the invention it would have been obvious for a person of ordinary skill to modify the housing of Friesz by using the teaching of Scicluna to use two doors so that it is easier to access the inside of the housing.

10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,659,643 to Friesz. Friesz '643 discloses every element as claimed and discussed above except complimentary magnets to help secure the housing. At the time of the invention it would have been obvious for a person of ordinary skill to modify Friesz's device by adding magnets to the means to open and close the housing since it is well known to use magnets to keep doors closed and magnets for doors are widely available.

11. Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,659,643 to Friesz in view of U.S. Patent 3,724,677 to Vogelhuber. Friesz

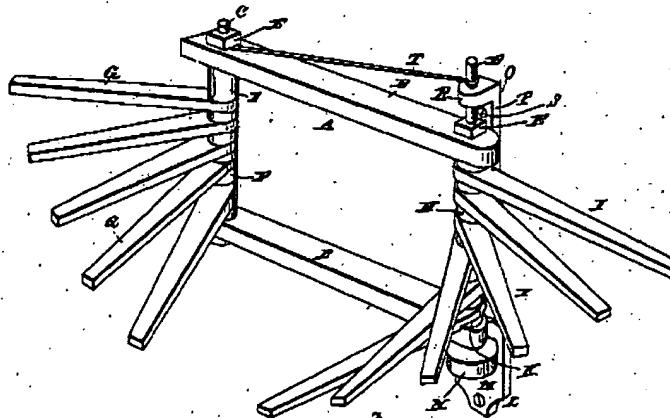
'643 discloses every element as claimed and discussed above except that the flag rods are rectangular, decrease in height as moving along away from the joint mechanism, has gaps to decrease weight, and has a tab at the second end as the means for containing flags. Vogelhuber '677 discloses a rod (10) made of a generally triangular shape with short side (12), long side (11), and hypotenuse (13). The long side (11) is the top and has a tab (18) at its end that helps to hold any article such as flags. Moving from left to right in figure 2 below is moving from the joint mechanism (26,27) and as doing so the height of the rod (10) decreases. Spaced along the rod (10) are gaps (14,15,16,17) that decrease the weight of the rod (10) (Col. 2, line 33-38). At the time of the invention it would have been obvious for a person of ordinary skill in the art to take the housing of Friesz and replace his rods with the rods of Vogelhuber by attaching the joint mechanism (26,27) of Vogelhuber to the tubular connectors (42,44,46) of Friesz via a pin. The motivation for such a modification is that the rod of Vogelhuber is stronger (Col. 1, line 40-43) and hence would be able to hold heavier flags.



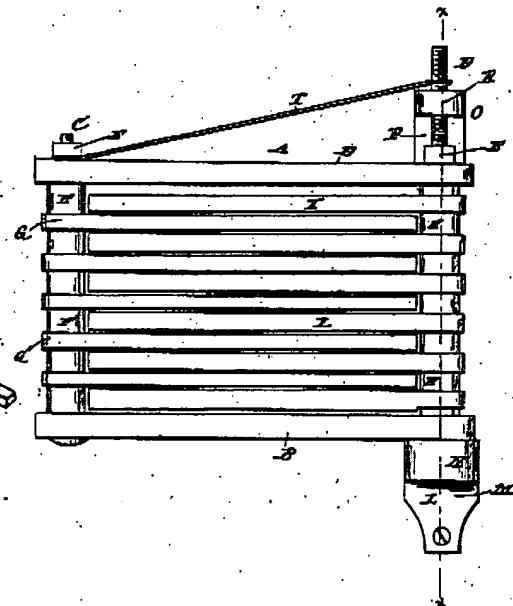
## Vogelhuber '677 Figure 2

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12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,659,643 to Friesz in view of U.S. Patent 386,036 to Westfall. Friesz '643 discloses every element as claimed and discussed above except two joint mechanisms on opposite sides of the housing with rods extending between the gaps of the rods on the opposite side. Westfall '036 discloses clothes rack with two bars (B) and two joint mechanisms (C, D) at each end of the bars (B). Rods (G) extend in gaps in between rods (I) and Rods (I) extend in gaps between rods (G) due to the use of spacers (F, H) (Line 38-45). At the time of the invention it would have been obvious for a person of ordinary skill in the art to use the teaching of Westfall to have joint mechanisms on both side of the housing of Friesz and to have the rods extend into the gaps of the rods on the opposite side so that there are more rods and that they can be rotated into a useable position.

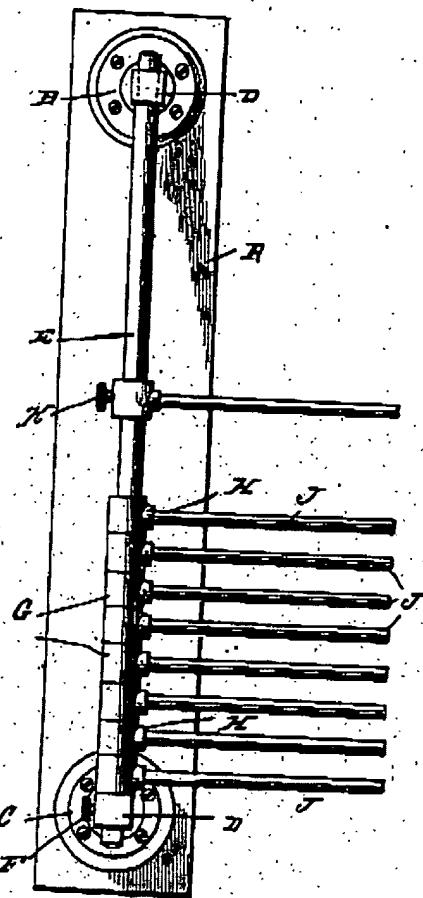


Westfall '036 Figure 1



Westfall '036 Figure 2

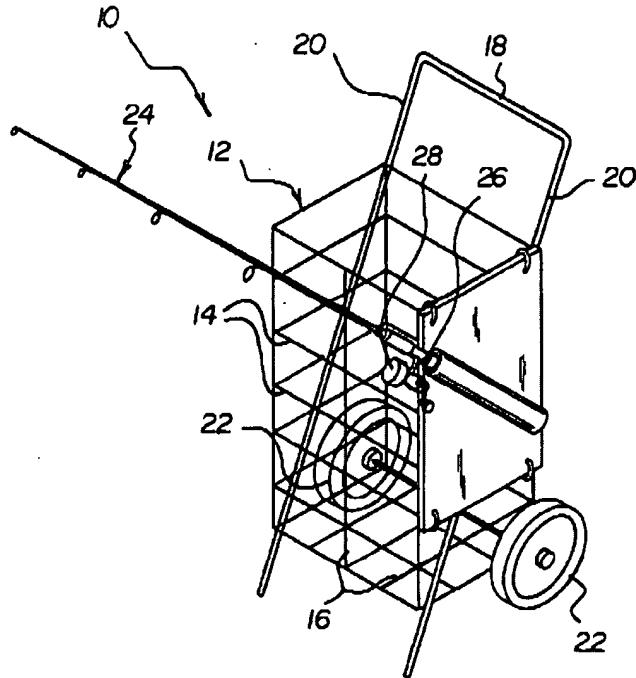
13. Claims 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,659,643 to Friesz in view of U.S. Patent 866,299 to Parrill. Friesz '643 discloses every element as claimed and discussed above except the joint mechanism having two housing connectors that connect to the inner wall of the housing, a support shaft held by the two housing connectors, at least two rod joints that are taller than the rods surround the support shaft and holding the rods so that they can rotate horizontally around the support shaft. Parrill '299 discloses a curtain display rack that has a joint mechanism made up of two housing connectors (B, C, D) that are mounted on to a panel (A). The two housing connectors (B, C, D) hold the ends of a support shaft (E). Rod joints (G) surround the support shaft (E) and connect at extension (H) to the rods (J). Rod joints (G) are taller than rods (J) to maintain a gap between rods (J) and both rotate around the support shaft (E). At the time of the invention it would have been obvious for a person of ordinary skill in the art to take the joint mechanism of Parrill and add it to the housing of Friesz so that the panel (A) of Parrill will be mounted the rigid upper housing (10) of Friesz since the device of Parrill allows for more rods to be used and hence more flags to be stored.



Parrill '299 Figure 1

14. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,659,643 to Friesz in view of U.S. Patent 5,806,827 to Gilmore. Friesz '643 discloses every element as claimed and discussed above except a flag pole storage sleeve on the side of the housing. Gilmore '827 discloses a pole storage sleeve (44) mounted on a panel (30) to store a fishing pole (24). At the time of the invention it would have been obvious for a person of ordinary skill in the art to take pole storage sleeve of

Gilmore and mount the panel onto the housing of Friesz so that the pole storage sleeve would be able to hold flagpoles or other pole like objects.



Gilmore '827 Figure 1

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 6,390,308 to Ebrahim discloses a scarf organizing device that has rods and a joint mechanism with a support shaft, rod joints, and two housing connectors. U.S. Patent 3,897,650 to Pilston discloses a storage sleeve with clamping means. U.S. Patent 586,977 to Sibley discloses a rectangular rod with a tab at the end and decreasing height from the joint mechanism. U.S. Patent 736,877 to Reichert discloses a rod with gaps and a generally decreasing height. U.S. Patent

3,126,099 to Powell discloses a housing with a door and a series of rods mounted to a joint mechanism that is a shaft and two housing connectors. U.S. Patent 2,446,733 to Abbe discloses a housing that has a joint mechanism with rotating plates to hold ties. U.S. Patent 3,639,022 to Elmo discloses a housing with a rod to hold ties. U.S. Patent 1,353,974 to Smith discloses a housing that has a series of rods to hold ties. U.S. Patent 2,469,143 to Ascherl discloses a housing with two doors and rods to hold ties.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-FRI 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TMA  
10/07/05

*clerk*

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